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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 761

**WILLIAM MAHONEY, AS LIQUOR CONTROL COM-
MISSIONER OF THE STATE OF MINNESOTA, ET
AL., APPELLANTS,**

vs.

JOSEPH TRINER CORPORATION

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF MINNESOTA**

FILED FEBRUARY 7, 1938.

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[fol. 1]

**IN UNITED STATES DISTRICT COURT, DISTRICT
OF MINNESOTA, FOURTH DIVISION**

JOSEPH TRINER CORPORATION, a Corporation, Plaintiff,

vs.

**DAVID R. ARUNDEL, as Liquor Control Commissioner of the
State of Minnesota, Harry Peterson, Attorney General of
the State of Minnesota, and Floyd B. Olson, Governor of
the State of Minnesota, Defendants**

BILL OF COMPLAINT—Filed May 25, 1935

The plaintiff above named for his bill of complaint herein
alleges:

I

That said plaintiff is now and during all the times hereinafter mentioned was a corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois; that said plaintiff's true and correct name is Joseph Triner Corporation; that said plaintiff was originally incorporated under the laws of the State of Illinois on the 8th day of December, 1917, as Joseph Triner Company; that thereafter and on the 16th day of April, 1934, said plaintiff's corporate name was changed to Joseph Triner Corporation;

That said plaintiff is a citizen and resident of the State of Illinois, and that its home office and place of business is at number 1333 to 1339, inclusive, South Ashland Avenue in the City of Chicago, Illinois.

II

That said plaintiff is now and during all the times hereinafter mentioned was, under and by virtue of the terms and provisions of its charter, engaged in the business of manufacturing intoxicating liquors for sale, and in selling intoxicating liquors as a wholesaler to retail dealers in intoxicating liquors; that said plaintiff's manufacturing plant is situated at the address above named in the City of Chicago, Illinois.

III

That on the 19th day of February, 1934, said plaintiff did in all things comply with the statutes of the State of Minnesota governing and effecting foreign corporations, and was on said date duly licensed by the State of Minnesota to engage in business in said State as a foreign corporation;

That on the 16th day of April, 1934, the corporate name of said plaintiff was changed in the office of the Secretary of State of Minnesota; that said plaintiff is now a duly licensed foreign corporation with full right and authority to engage in business in the State of Minnesota;

That upon being duly licensed to do business in the State of Minnesota, said plaintiff did on or about February 19, 1934, establish an office, warehouse and place of business in the City of Saint Paul, Ramsey County, Minnesota, and within the jurisdiction of the above entitled court which said office and place of business has been ever since said date, and is now being conducted, operated and maintained by said plaintiff;

That the business of said plaintiff as operated, conducted and maintained in the State of Minnesota is that of a wholesaler engaged in the business of selling intoxicating liquors to retailers;

That said plaintiff during the times herein mentioned has carried a stock of merchandise at its place of business in Saint Paul, Minnesota, of the approximate worth and value of \$20,000.00.

[fol. 3]

That on or about the 5th day of December, 1933, said plaintiff was given and granted a license and permit by the Federal Alcohol Control Administration of the Government of the United States to manufacture intoxicating liquors and to sell the same at wholesale which said Federal license and permit said plaintiff now holds and the same is in full force and effect;

That on the 19th day of February, 1934, said plaintiff, under its original name of Joseph Triner Company, was issued a state license and permit to manufacture intoxicating liquors and to sell the same in the State of Minnesota as a wholesaler; that said state license and permit was re-issued to said plaintiff under its new corporate name on

April 16, 1934; that said state license and permit were issued to said plaintiff by the defendant, David R. Arundel as Liquor Control Commissioner of the State of Minnesota as he was authorized to do by the laws of said State; that said state license and permit is now and during all the times herein mentioned has been in full force and effect.

V

That said defendant, David R. Arundel, is now and during all the times herein mentioned was the duly appointed, qualified and acting Liquor Control Commissioner of the State of Minnesota with full power and authority appertaining to that office under and by virtue of the laws of said state; that he is a citizen of Minnesota and a resident of Minneapolis, Hennepin County, Minnesota; that said defendant, Harry Peterson, is now and during all the times herein mentioned was the duly elected, qualified and acting Attorney General of the State of Minnesota and is a citizen of said state residing in St. Paul, Minnesota; that said defendant, Floyd B. Olson, is now and during all the times herein mentioned was the duly elected, qualified and acting Governor of the State of Minnesota, that he is a citizen of said state residing in Minneapolis, Hennepin County, Minnesota.

[fol. 4]

VI

That for the purpose of complying with the laws of the State of Minnesota and the rules and regulations of said defendant, David R. Arundel as Liquor Control Commissioner of said State, the plaintiff herein did prior hereto register and file with said Liquor Control Commissioner the various brands of liquor which said plaintiff proposed and intended to sell at wholesale in the State of Minnesota, and which said plaintiff, as manufacturer, intended to import into the State of Minnesota for the purpose of sale; that Exhibit "A" hereto attached truly and correctly shows the names of said brands of liquor and the dates when the same were filed and registered with the said Liquor Control Commissioner; that said Exhibit "A" is hereby made a part hereof by reference; that at the time of filing and registering said brands with the Liquor Control Commissioner of Minnesota said plaintiff furnished to said Commissioner and filed with said brands, a chemical analysis of each of said brands of liquor, which chemical analysis was accepted

and approved by said Liquor Control Commissioner and said plaintiff was granted full right, permission and authority to import said brands of liquor into the State of Minnesota and to sell the same at wholesale in said State of Minnesota;

That each and all of said brands of liquor were manufactured by said plaintiff at its manufacturing plant and place of business in the City of Chicago, Illinois;

That since February 19, 1934, said plaintiff has shipped in interstate commerce from the City of Chicago, Illinois to its warehouse and place of business in the City of Saint Paul, Minnesota, intoxicating liquors manufactured by it aggregating in amount the sum of approximately \$90,000.00; that said liquor so shipped into Minnesota included all of the brands listed upon Exhibit "A" hereto attached; that [fol. 5] when said liquor was received in the State of Minnesota and placed in the warehouse, the same was resold by said plaintiff in the State of Minnesota to more than 250 retail dealers in intoxicating liquors in the State of Minnesota who in turn sold the same to consumers in said state; that all of said liquor shipped by the plaintiff into the State of Minnesota as hereinbefore alleged moved into channels of interstate commerce;

That said plaintiff for the purpose of establishing and building up its business in the State of Minnesota has spent approximately \$10,000.00 in advertising and sales promotion work; that said plaintiff has built up and established an extensive demand for each and all of said brands of liquor listed on Exhibit "A", has developed an extensive and valuable goodwill in and to each of said brands; that said plaintiff has popularized said brands of liquor with the consuming public; that said plaintiff has since it was licensed to do business in the State of Minnesota realized a net profit from the business carried on by it in the State of Minnesota of approximately \$1200.00 per month; that said business has been progressively increasing from month to month.

VII

That the Legislature of the State of Minnesota at its regular session in 1935 enacted chapter 390 of the Session Laws of 1935 which reads as follows:

**"An Act to Regulate the Importation of Intoxicating
Liquor Containing More Than 25 Per Cent of Alcohol by
Volume**

Be it enacted by the Legislature of the State of Minnesota:

Section 1. No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States."

[fol. 6] that said law was duly approved on the 29th day of April, 1935 and is now a part of the statutory law of the State of Minnesota; that after the enactment of said law said defendant, David R. Arundel as Liquor Control Commissioner of the State of Minnesota, notified said plaintiff that said law had been enacted and that said plaintiff should cease and desist as a manufacturer and wholesaler from importing any brand or brands of intoxicating liquors containing more than 25% of alcohol by volume ready for sale without further processing unless such brand or brands were duly registered in the patent office of the United States.

VIII

That none of said brands listed on Exhibit "A" have ever been registered in the patent office of the United States and that each and all of said brands contain more than 25% of alcohol by volume, and that each and all of said brands so imported by the plaintiff in the State of Minnesota are finished products and no further processing is necessary;

That since the enactment of said law by the Legislature of Minnesota said plaintiff has been prevented by the defendant, David R. Arundel as Liquor Control Commissioner of the State of Minnesota from importing any of said brands in the State of Minnesota as a manufacturer and from selling any of said brands in the State of Minnesota as a wholesaler;

That at the time said law was enacted the plaintiff herein had a stock of merchandise consisting of said brands listed on Exhibit "A" in the State of Minnesota amounting to approximately \$20,000.00 which stock of merchandise said

plaintiff has been permitted to sell and deliver to its customers in the State of Minnesota; that said stock has been exhausted; that said defendant has unfilled orders on hand for brands of liquor listed on Exhibit "A" amounting to approximately \$1,000.00 and has been forced to reject orders in the amount of approximately \$5,000.00 for brands of liquor listed on Exhibit "A" for the reason that said [fol. 7] plaintiff has been unable to accept said orders and to fill the same for the reasons hereinbefore set forth and alleged; that because of said law and the attempt to enforce the same by the Liquor Control Commissioner, said plaintiff has been obliged to lay off his traveling salesmen, desist in advertising said brands of liquor and in promoting its business in the State of Minnesota.

IX

That on account of said law and the acts and conduct of said Liquor Control Commissioner thereunder as hereinbefore alleged, the said plaintiff's business has been practically closed in the State of Minnesota; that the property and business of said plaintiff in the State of Minnesota, including said plaintiff's goodwill and said brands listed on Exhibit "A"; is of the worth and value of \$30,000.00; that unless said plaintiff is permitted to import said brands of liquor in the State of Minnesota and to sell the same at wholesale in the future as it has been privileged and permitted to do in the past, the business of said plaintiff will be completely and totally destroyed and said brands for use in the State of Minnesota will be rendered of no value in said state and said plaintiff will be deprived not only of said property and business of the value of \$20,000.00, but will be deprived of future profits which said plaintiff believes will amount during the year 1935 to at least the sum of \$10,000.00;

That in addition to selling at wholesale the brands of liquor listed upon Exhibit "A" which are brands owned by said plaintiff, said plaintiff has imported into the State of Minnesota through the channels of interstate commerce brands of liquor manufactured by other manufacturing concerns which brands were duly registered with the said Liquor Control Commissioner and permits issued for the sale thereof; that said brands of liquor when so imported by said plaintiff were sold by it as a wholesaler in the State

of Minnesota with the approval of the said Liquor Control [fol. 8] Commissioner and in conformity with law; that since the enactment of said statute as hereinbefore alleged, said plaintiff has been deprived of the right and privilege to import said brands and to sell the same as a wholesaler in the State of Minnesota;

That since April 29, 1935 there have been and are now citizens and residents of the State of Minnesota engaged in the business of importing brands of intoxicating liquor into the State of Minnesota containing more than 25% of alcohol by volume for the purpose of further processing the same in the State of Minnesota which said brands are not now and never have been registered in the patent office of the United States; that said liquor so imported is being processed in Minnesota and sold at wholesale in Minnesota and in other states in interstate commerce without said brands being registered in the patent office of the United States; that under said statutory law hereinbefore set forth, it is unnecessary for said brands to be registered in the patent office; that there are a large number of manufacturers and wholesalers of intoxicating liquors who, under the provisions of said statute and with the permission of the said Liquor Control Commissioner, are engaged in importing from other states through the channels of interstate commerce into the State of Minnesota intoxicating liquors containing more than 25% of alcohol by volume under trade marks which have been registered in the patent office of the United States; that the liquor manufactured by plaintiff and sold by him under the brands listed on Exhibit "A" are identical in kind, ingredients and quality with liquors being sold in Minnesota by manufacturers and jobbers in Minnesota under brands registered in the patent office of the United States; that the registration of brands in the patent office of the United States is not in any way dependent upon the kind, ingredients or quality of the liquor to which the brand is affixed;

That at least six (6) months will be required from and after the date hereof to register each of said brands listed on Exhibit "A" in the patent office of the United States; that to register said brands the plaintiff would be required to lay out and expend approximately the sum of \$1600.00; that should oppositions to any of said registrations be filed,

a greater period than six (6) months would be required to obtain said registrations and the cost of said registrations [fol. 9] would be materially and substantially increased over and above said figure of \$1600.00; that while the brands of said plaintiff listed on Exhibit "A" have been duly approved by said Liquor Control Commissioner of Minnesota and sold in the State of Minnesota and while said plaintiff has acquired valuable property rights therein, that because of the nature and character of said brands, there is a reasonable probability that some of the same cannot be registered in the patent office of the United States;

That under the laws of the United States and the rules and regulations of the United States government adopted thereunder, said plaintiff having obtained a Federal license and permit to manufacture liquors in the City of Chicago, Illinois cannot obtain a license and permit to manufacture and process intoxicating liquors in the State of Minnesota without abandoning and discontinuing said manufacturing business in the State of Illinois; that in addition to shipping its manufactured product into the State of Minnesota as hereinbefore alleged, said plaintiff has been and now is engaged in shipping said brands of liquor listed on Exhibit "A" in interstate commerce in various states of the United States; that said plaintiff has extensively advertised said brands throughout the United States and spent large sums of money in and about the creation of a demand for said brands of liquor;

That the driving of said plaintiff from the State of Minnesota by said statutory law hereinbefore set forth has substantially and materially affected said plaintiff's business in interstate commerce in other parts of the United States;

That said plaintiff employs in its manufacturing plant in the City of Chicago, Illinois 120 employees who are engaged in and about the manufacture of intoxicating liquors; that more than 200 manufacturers and wholesalers of intoxicating liquors have been duly licensed to sell their various brands in the State of Minnesota which brands have [fol. 10] not been registered in the patent office of the United States; that each of said manufacturers and importers is directly affected by said statutory law.

X

That said statutory law hereinbefore set forth is void for the reason that the same violates the Constitution of the United States in that:

- a. It is unreasonable, arbitrary, oppressive and discriminatory.
- b. It denies to the plaintiff and others similarly situated the equal protection of the law.
- c. It denies to the plaintiff the right to carry on a lawful business recognized and made lawful by the State of Minnesota, in a lawful manner.
- d. It takes and destroys property and property rights of the plaintiff without just cause or reason and without just compensation.
- e. It unreasonably and arbitrarily infringes upon the freedom of contract.
- f. It effectively confiscates the property of the plaintiff without just compensation.
- g. It is by its provisions in restraint of trade prohibitory of lawful acts done in the conduct of a lawful business.
- h. It is class legislation enacted for the benefit of the manufacturers and wholesalers who own or control brands registered in the United States patent office at Washington, and for the benefit of manufacturers and wholesalers engaged in the business of manufacturing and processing liquor in the State of Minnesota who import liquor into said state for further processing.
- i. It is arbitrary, discriminatory and unreasonable interference with interstate commerce.
- j. It has no relation to the public health, morals or welfare of the people of the State of Minnesota, and is enacted for the avowed purpose of discriminating against manufacturers and laborers engaged in processing liquor outside of the State of Minnesota and in favor of manufacturers, laborers and citizens engaged in the processing and manufacturing of liquor within the State of Minnesota.
- [fol. 11] k. It denies said plaintiff and other manufacturers and wholesalers similarly situated with the equal protection of the law.

XI

That this action is brought by said plaintiff on its own behalf and on behalf of all other manufacturers and whole-

salers of intoxicating liquors similarly situated and who are affected by the provisions of said statutory law hereinbefore set forth; that the question of the constitutionality of said statute is one of common and general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court.

XII

That said plaintiff has no plain, speedy and adequate remedy at law; that unless equitable relief by temporary and permanent injunction is granted by this court, the business of said plaintiff and that of all other manufacturers and wholesalers similarly situated and the property of said plaintiff and said manufacturers and wholesalers and their businesses will be destroyed before the validity of said statute can be determined in any other manner; that unless temporary and permanent injunction is granted by this court to the said plaintiff and said manufacturers and wholesalers, great and irreparable loss and damage will result to said plaintiff and said manufacturers and wholesalers; that unless said defendant, as Liquor Control Commissioner, be restrained and enjoined, a multiplicity of suits will result.

XIII

That the jurisdiction of this court depends on the following grounds:

a. This is a suit of a civil nature in equity arising under the Constitution of the United States to enjoin the enforcement of the Statute hereinbefore set forth of the State of Minnesota on the ground that said statute violates the Federal Constitution and the rights of the plaintiff thereunder, and that the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

[fol. 12] b. This is a suit of a civil nature in equity between citizens of different states wherein the amount in controversy exceeds, exclusive of interest or costs, the sum or value of \$3,000.00.

-IV

That said defendant, Harry Peterson, as Attorney General of the State of Minnesota, and said defendant, Floyd

B. Olson, as Governor of the State of Minnesota are made defendants herein for the reason that it is the purpose and intention of said plaintiff to make application to the court for a temporary injunction herein under and pursuant to the terms and provisions of Section 266 of the Judicial Code of the United States, also known as Title 28, Section 380 of the United States Code Annotated.

Wherefore, Plaintiff prays:

1. That the court adjudge and determine Chapter 390 of the Session Laws of the State of Minnesota for 1935 to be in violation of the Constitution of the United States and in all things illegal and void.

2. That a temporary injunction be issued by the court restraining and enjoining said defendant, David R. Arundel, as Liquor Control Commissioner of the State of Minnesota from enforcing said statute and from any way interfering with said plaintiff in importing and selling the brands of liquor listed upon Exhibit "A" under the license and permit heretofore granted it by the said Liquor Control Commissioner.

3. That said plaintiff be given and awarded a permanent injunction restraining and enjoining said defendant, David R. Arundel, as Liquor Control Commissioner of the State of Minnesota from enforcing said statute and from any way interfering with said plaintiff in importing and selling the brands of liquor listed upon Exhibit "A" under the license and permit heretofore granted it by the said Liquor Control Commissioner.

[fol. 13] 4. That said plaintiff be given and awarded such other further and different relief as it may show itself entitled to in the premises.

Joseph Triner Corporation, by Joseph Triner, President. Bradford, Cummins & Cummins, Carl W. Cummins, Attorneys and solicitors for plaintiff, 330 Minnesota Building, St. Paul, Minnesota.

[fol. 14] EXHIBIT "A" TO BILL OF COMPLAINT

List of brands of the plaintiff and the dates of the filing and registration of the same with the Liquor Control Commissioner of the State of Minnesota.

July 16, 1934—Furlong, Field, Anisette, Cordial Q. R., Creme de Menthe, Curacao, Kuemmel, Spearment, Apricot, Blackberry, Maraschino, Peach, Cordial C. G., Cordial C. Y., Cordial B, Creme de Cacao, Vermuth, Orange Bitters, Club Bitters, Elixir D'Assine, Sloe Gin.

Aug. 3, 1934—Triner's Red Seal Gin.

Aug. 3, 1934—Top Sergeant.

Aug. 16, 1934—Distilled Gin, Stearns County, Captain Joe.

Sept. 13, 1934—Top Sergeant.

Sept. 20, 1934—Triner's Brandy.

Oct. 4, 1934—Heathery Isle, Harvey Mac Naire.

Nov. 5, 1934—Barr Whiskey.

Feb. 20, 1935—Bill Taylor.

Mar. 18, 1935—Southern Hospitality.

Apr. 2, 1935—Bartenders Choice.

May 4, 1935—Ceska.

May 4, 1935—Polska.

May 6, 1935—Jules Boni Distilled Dry Gin.

May 6, 1935—Red Seal Distilled Gin.

[fol. 15] *Duly sworn to by Joseph Triner. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER—Filed August 16, 1935

Now comes the defendants and for their joint and several answer to plaintiff's bill of complaint herein respectfully state and inform the court:

I

Defendants admit the allegations set forth in paragraph I of plaintiff's complaint.

II

Defendants admit the allegations set forth in paragraph II of plaintiff's complaint.

III

Defendants admit the allegations set forth in paragraph III of plaintiff's complaint.

[fol. 17]

IV

Defendants admit the allegations set forth in paragraph IV of plaintiff's complaint.

V

Defendants admit the allegations set forth in paragraph V of plaintiff's complaint.

VI

Defendants admit the allegations set forth in paragraph VI of plaintiff's complaint.

VII

Defendants admit the allegations set forth in paragraph VII of plaintiff's complaint.

VIII

Defendants admit all of the allegations set forth in paragraph VIII of plaintiff's complaint with the exception of those allegations contained in the third paragraph thereof, which allegations defendants deny for the reason that they do not have sufficient information to form a belief with reference to the truth thereof.

IX

Defendants admit all of the allegations set forth in paragraph IX of plaintiff's complaint with the exception of those allegations contained in the first paragraph thereof, which allegations defendants specifically deny; with the further exception of that part of paragraph two thereof reading "that since the enactment of said statute as hereinbefore alleged, said plaintiff has been deprived of the right and privilege to import said brands and to sell the same as a wholesaler in the State of Minnesota" which allegation defendants specifically deny; with the further exception of that part of paragraph three thereof reading "that the liquor [fol. 18] manufactured by plaintiff and sold by him under the brands listed on Exhibit 'A' are identical in kind, in-

gredients and quality with liquors being sold in Minnesota by manufacturers and jobbers in Minnesota under brands registered in the patent office of the United States" which allegation defendants deny for the reason that they do not have sufficient information to form a belief with reference to the truth thereof; with the further exception of those allegations contained in paragraph four thereof which allegations defendants deny for the reason that they do not have sufficient information to form a belief with reference to the truth thereof; with the further exception of that part of paragraph five thereof reading: "That under the laws of the United States and the rules and regulations of the United States government adopted thereunder, said plaintiff having obtained a Federal license and permit to manufacture liquors in the city of Chicago, Illinois, cannot obtain a license and permit to manufacture and process intoxicating liquors in the State of Minnesota without abandoning and discontinuing said manufacturing business in the State of Illinois." which allegation defendants specifically deny; with the further exception of the allegation set forth in paragraph six thereof, which allegation defendants specifically deny.

X

Defendants specifically deny each and every allegation set forth in paragraph X of plaintiff's complaint.

XI

Defendants admit the allegations set forth in paragraph XI of plaintiff's complaint with the exception of that part thereof reading: "That this action is brought by said plaintiff on * * * behalf of all other manufacturers and wholesalers of intoxicating liquors similarly situated and who are [fol. 19] affected by the provisions of said statutory law hereinbefore set forth" which allegation defendants deny for the reason that they do not have sufficient information to form a belief with reference to the truth thereof.

XII

Defendants specifically deny each and every allegation contained in paragraph XII of plaintiff's complaint.

XIII

Defendants admit the allegations set forth in paragraph XIII of plaintiff's complaint.

XIV

Defendants admit the allegations set forth in paragraph XIV of plaintiff's complaint.

XV

Defendants deny each allegation, matter and thing contained in plaintiff's bill of complaint except as herein admitted or qualified.

Wherefore: Defendants move the court that plaintiff's bill of complaint herein may be dismissed, and that defendants have and recover their costs and disbursements.

Harry H. Peterson, Attorney General; Frederic A. Pike, Deputy Attorney General; Roy C. Frank, Assistant Attorney General; Attorneys for Defendants, 102 State Capitol, St. Paul, Minnesota.

[fols. 20-22] *Duly sworn to by David R. Arundel. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR SUBSTITUTION—Filed May 8, 1937

Upon the hereto attached stipulation it is hereby ordered and directed that William Mahoney be substituted as a defendant in the above entitled action in the place and stead of David R. Arundel; that Elmer A. Benson be substituted as a defendant in the above entitled action in the place and stead of Floyd B. Olson; and that William S. Ervin be substituted as a defendant in the above entitled action in the place and stead of Harry H. Peterson; that all future proceedings be entitled as against the substituted defendants; that the defendants David R. Arundel, Floyd B. Olson and Harry H. Peterson be discharged and released from any liability by reason of the above action; and that the interlocutory injunction heretofore issued by this Court in said action continue in full force and effect against the

substituted defendants until such time as the court shall otherwise order.

Dated at Minneapolis, Minnesota, this 8 day of May 1937.

Gunnar H. Nordbye, Judge.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION.

In Equity. No. 2836

JOSEPH TRINER CORPORATION, a Corporation, Plaintiff,

vs.

WILLIAM MAHONEY, as Liquor Control Commissioner of the State of Minnesota; WILLIAM S. ERVIN, Attorney General of the State of Minnesota, and ELMER BENSON, Governor of the State of Minnesota, Defendants

In Equity. No. 2839

FRANK MCCORMICK, INCORPORATED, a Corporation, Plaintiff,

vs.

WILLIAM MAHONEY, as Liquor Control Commissioner of the State of Minnesota; WILLIAM S. ERVIN, Attorney General of the State of Minnesota, and ELMER A. BENSON, Governor of the State of Minnesota, Defendants

OPINION—Filed October 23, 1937

These suits, which were brought to enjoin the enforcement of Chapter 390 of the Laws of Minnesota for 1935, came on to be tried before this Court on April 9, 1937, and were, by agreement of the parties, submitted together upon stipulations of fact and written briefs.

[fol. 25] Messrs. Bradford, Cummins & Cummins appeared for and filed a brief on behalf of the plaintiff Joseph Triner Corporation.

Mr. Thomas Gallagher appeared for and filed a brief on behalf of the plaintiff Frank McCormick, Incorporated.

Mr. G. H. Braddock, with permission of the Court, filed a brief as *amicus curiæ*.

Mr. William S. Ervin, Attorney General of the State of Minnesota, and Mr. Roy C. Frank, Assistant Attorney General of the State of Minnesota, appeared for and filed a brief for the defendants.

These are the same suits in which this Court granted preliminary injunctions on June 29, 1935. (11 F. Supp. 145.) The fact situation remains unchanged except for the substitution of the present defendants for their predecessors in office. The facts are sufficiently stated in our opinion granting the preliminary injunctions and will not be repeated. The plaintiffs are wholesalers and licensed to sell liquor in the State of Minnesota.

Chapter 390 of the Laws of Minnesota, 1935, provides:

"No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors containing more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States."

The ground upon which we granted the preliminary injunctions in these cases was that the classifying of brands of imported liquor on the basis of their registration in the Patent Office of the United States and the forbidding of the sale of imported brands not registered in the Patent Office had no reasonable relation to the regulation of the liquor traffic within the State of Minnesota, and that the classification adopted by the Legislature of Minnesota was purely arbitrary and unreasonable and therefore violated [fol. 26] the equal protection clause of the Federal Constitution.*

Our attention has now been directed to the decision of the District Court of the Southern District of California in *Young's Market Co., et al. v. State Board of Equalization of California, et al.*, 12 F. Supp. 140, in which case an injunction was granted by that court against the enforcement of a law of California which imposed an annual license tax on wholesalers selling beer imported from other states into

* A1 interesting discussion of these cases and the questions involved will be found in *Cornell Quarterly*, Vol. XXI, No. 3, page 504.

California, upon the ground that the statute violated both the commerce clause and the equal protection clause of the Federal Constitution because wholesalers selling beer made in California were not required to pay this license tax and therefore the wholesalers of imported beer were unreasonably discriminated against. The Supreme Court of the United States reversed the District Court in *State Board v. Young's Market Co.*, 299 U. S. 59. The District Court in granting the injunction against the enforcement of the California statute there challenged, had relied to some extent upon our decision granting preliminary injunctions in these cases. Unless the situation with which we are confronted is distinguishable from that passed upon by the District Court of the Southern District of California and by the Supreme Court, we should reverse our holding and deny permanent injunctions.

A careful comparison of the cases therefore becomes necessary. In the cases before us, the plaintiffs—like the plaintiffs in the California case—are wholesalers licensed to do business in the State. The Minnesota statute prohibits the importation of liquors of a certain alcoholic content [fol. 27] which are ready for sale without further processing, unless the brands of such liquors are registered in the Patent Office of the United States. In the California case the law prohibited a licensed wholesaler from dealing in beer imported from without the State unless he paid, in addition to his wholesaler's license fee, the importer's license fee or tax required of a wholesaler who sold beer imported into California. The discrimination complained of in the California case was that which arose between wholesalers who sold domestic beer and those who sold imported beer. Those who sold domestic beer were not required to pay the importer's license fee, while those who sold imported beer were required to pay it. The Minnesota statute discriminates between wholesalers who handle imported brands of liquor which are not registered in the Patent Office and those who handle imported brands of liquor which are registered in the Patent Office. It discriminates between those who import liquor requiring further processing in Minnesota and those importing liquor which does not require further processing in Minnesota. Imported liquor requiring further processing in the State may be sold in the State whether the brand is registered or not, whereas the same kind and quality of liquor, if it

is imported into the State ready for sale, can only be sold provided the brand is registered. Those who sell only liquor manufactured in Minnesota are not affected by the law, while those who import liquor of equal goodness may not sell it in the State unless it bears a registered brand.

It seems to us that there is a vast distinction between levying a uniform license tax upon wholesalers dealing in imported liquor, and prohibiting a licensed wholesaler from [fol. 28] dealing in imported liquor ready for sale, merely because the brand or trade name by which the liquor is known is not registered in the Patent Office. Licensing and imposing license fees and taxes is an ancient and well-recognized method of regulating businesses of all kinds, but, so far as we are aware, no other attempt has ever been made by a State to regulate and control the importation of intoxicating liquor because of the registration or nonregistration in the Patent Office of the trade name which is applied to it. If we were convinced that the statute here in question had any reasonable relation to the regulation or control of the liquor traffic within the State of Minnesota, we would unhesitatingly dismiss these suits. If there in fact exists a reasonable basis for permitting the importation of liquor bearing a registered brand and for prohibiting the importation of the same kind and quality of liquor bearing an unregistered brand or a brand which is not subject to registration, we are unable to visualize it. We can see a relation between the United States Pure Food and Drug Act and the kind of liquor which is offered to the public for consumption, but we can see no relation between the laws of the United States which permit the registration of certain trade names in the Patent Office and the kind and quality of liquor which is offered to the public.

We have read with great care the decision of the Supreme Court of the United States in the California case referred to. That Court held that under the Twenty-first Amendment a State may exact a license fee for the privilege of importing beer from other states; that the Twenty-first Amendment abrogated the right to import free so far as intoxicating liquors were concerned; and that the imposition of the importer's license fee by the State of California was not in violation of the commerce clause of the Federal Constitution. The contention that the California statute violated the equal protection clause, the Supreme

Court disposed of in the following language (page 64 of 299 U. S.):

“Second. The claim that the statutory provisions and the regulations are void under the equal protection clause may be briefly disposed of. A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license-fee for the privilege of manufacturing it; and under the California statute is obliged to pay \$750 a year. Compare *Brown-Forman Co. v. Kentucky*, 217 U. S. 563. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license-fee of \$500. Compare *Kidd v. Alabama*, 188 U. S. 730, 732.”

In discussing the claim that the statute violated the commerce clause, the Supreme Court made this statement (page 62 of 299 U. S.):

“The Amendment which ‘prohibited’ the ‘transportation or importation’ of intoxicating liquors into any state ‘in violation of the laws thereof,’ abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes.”

If that language be construed to mean that a State may impose any conditions with respect to importations of intoxicating liquors, whether arbitrary and unreasonable or not, it sustains the contention which the defendants here make that, regardless of whether the statute of Minnesota has a reasonable or an unreasonable relation to the subject-matter, it must, nevertheless, be sustained. It is to be noted, however, that the Supreme Court expressly found it unnecessary to declare that the Twenty-first Amendment, [fol. 30] with respect to liquor, had freed the States from all restrictions upon their police power which are to be found in the Constitution of the United States. It seems fair to assume, under the circumstances, that the Supreme Court

was by no means convinced that the Twenty-first Amendment left the States free from the restrictions of the equal protection clause in dealing with intoxicating liquor.

We are not convinced that our conclusion that the Minnesota statute here assailed was invalid as violating the equal protection clause of the Constitution, was wrong; and, in the absence of a decision of the Supreme Court of the United States holding that a State may, by virtue of the Twenty-first Amendment, impose arbitrary and unreasonable restrictions upon some importers of intoxicating liquor which are not imposed upon others similarly situated, and which restrictions would otherwise be violative of the Fourteenth Amendment, we think this Court ought not so to declare.

The injunctions heretofore granted will be made permanent; and the plaintiffs may present findings of fact and conclusions of law conforming to the equity rules, and appropriate decrees.

Dated this 23d day of October, 1937.

John B. Sanborn, United States Circuit Judge; Gunnar H. Nordbye, United States District Judge; Matthew M. Joyce, United States District Judge.

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed November 27, 1937

The above entitled suit came on regularly for trial before a Court consisting of three Judges, as required by law, on the 9th day of April, 1937, Messrs. Bradford, Cummins and Cummins appearing on behalf of the plaintiff, and Mr. William S. Ervin, Attorney General of the State of Minnesota, and Mr. Roy C. Frank, Assistant Attorney General of the State of Minnesota appearing on behalf of the defendants;

From the pleadings in the action and the stipulated facts, and all of the files and records herein, the Court makes the following

Findings of Fact

I

That said plaintiff is now and during all of the times hereinafter mentioned was a corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois.

[fol. 32]

II

That said plaintiff is a citizen and resident of the State of Illinois, and its home office and place of business is at 1333-1339 South Ashland Avenue in the City of Chicago, Illinois.

III

That said plaintiff is now and during all of the times hereinafter mentioned was under and by virtue of the terms and provisions of its charter engaged in the business of manufacturing intoxicating liquors for sale, and in selling intoxicating liquors as a wholesaler, to retail dealers in intoxicating liquors; that said plaintiff's manufacturing plant is situated at the address above named in the City of Chicago, Illinois.

IV

That on the 19th day of February, 1934, said plaintiff did in all things comply with the Statutes of the State of Minnesota governing and affecting foreign corporations, and was on said date duly licensed by the State of Minnesota to engage in business in said State as a foreign corporation.

V

That upon being duly licensed to do business in the State of Minnesota, the plaintiff did on or about February 19th, 1934, establish an office, warehouse and place of business in the City of Saint Paul, Ramsey County, Minnesota, and within the jurisdiction of the above entitled Court, which office and place of business has ever since said date and is now being conducted, operated and maintained by said plaintiff.

VI

That the business of said plaintiff as operated and carried on in the State of Minnesota is that of a wholesaler engaged in the business of selling intoxicating liquors to retailers.

[fol. 33]

VII

That said plaintiff during the times herein mentioned has carried a stock of merchandise at its place of business in Saint Paul, Minnesota of the approximate worth and value of Twenty Thousand Dollars (\$20,000.00).

VIII

That on or about the 5th day of December, 1933, said plaintiff was given and granted a license and permit by the Federal Alcohol Control Administration of the Government of the United States to manufacture intoxicating liquors and sell the same at wholesale which said Federal license and permit said plaintiff now holds and the same is in full force and effect.

IX

That when this case was commenced, David R. Arundel, as Liquor Control Commissioner of the State of Minnesota, Harry Peterson, Attorney General of the State of Minnesota, and Floyd B. Olson, Governor of the State of Minnesota, were named as defendants in this action;

That after the action was commenced, the defendants, whose names now appear in the title of this action, were substituted in place and in lieu of the parties above named as their successors in office.

X

That on the 19th day of February, 1934, said plaintiff was issued a State license and permit to manufacture intoxicating liquors and to sell the same in the State of Minnesota as a wholesaler by said David R. Arundel as Liquor Control Commissioner of the State of Minnesota as he was authorized to do by the laws of said State; that said State license and permit is now and during all times herein mentioned has been in full force and effect.

XI

That said David R. Arundel, at the time of the commencement of this action and for some time prior thereto and thereafter was the duly appointed, qualified and acting Liquor Control Commissioner of the State of Minnesota [fol. 34] with full power and authority appertaining to that

office under and by virtue of the laws of said State; that he was a citizen and resident of the City of Minneapolis, Hennepin County, Minnesota;

That said Harry Peterson at the time of the commencement of said action and for some time prior thereto and thereafter was the duly elected, qualified and acting Attorney General of the State of Minnesota, and a citizen and resident of the City of Saint Paul, Ramsey County, Minnesota;

That said Floyd B. Olson, at the time of the commencement of this action and for some time prior thereto and thereafter, was the duly elected, qualified and acting Governor of the State of Minnesota, and a citizen and resident of the City of Minneapolis, Hennepin County, Minnesota.

XII

That for the purpose of complying with the laws of the State of Minnesota and the rules and regulations of David R. Arundel, as Liquor Control Commissioner of said State, the plaintiff herein did, prior to the commencement of this action, register and file with the said Liquor Control Commissioner the various brands of liquor which said plaintiff proposed and intended to sell at wholesale in the State of Minnesota, and which said plaintiff, as manufacturer, intended to import into the State of Minnesota for the purpose of sale; that Exhibit "A" attached to plaintiff's complaint truly and correctly shows the names of said brands of liquor and the dates on which the same were filed and registered with said Liquor Control Commissioner; that said Exhibit "A." is hereby made a part hereof by reference;

That at the time of filing and registering said brands with the Liquor Control Commissioner of Minnesota said plaintiff furnished to said Commissioner and filed with said brands, a chemical analysis of each of said brands of liquor, which chemical analysis was accepted and approved by said Liquor Control Commissioner and said plaintiff was granted full right, permission and authority to import said brands of [fol. 35] liquor into the State of Minnesota and to sell the same at wholesale in said State;

That each and all of said brands of liquor were manufactured by said plaintiff at its manufacturing plant and place of business in the City of Chicago, Illinois.

That since February 19th, 1934 said plaintiff has shipped in interstate commerce from the City of Chicago, Illinois to its warehouse and place of business in the City of Saint Paul, Minnesota, intoxicating liquors manufactured by it aggregating in amount the sum of approximately Ninety Thousand Dollars (\$90,000.00); that said liquor so shipped into Minnesota included all of the brands listed upon Exhibit "A" hereinbefore referred to; that when said liquor was received in the State of Minnesota and place in the warehouse, the same was resold by said plaintiff in the State of Minnesota to more than 250 retail dealers in intoxicating liquors in the State of Minnesota who in turn sold the same to consumers in said State; that all of said liquor shipped by the plaintiff into the State of Minnesota moved in the channels of interstate commerce;

XIII

That said plaintiff for the purpose of establishing and building up its business in the State of Minnesota has spent approximately Ten Thousand Dollars (\$10,000.00) in advertising and sales promotion work; that said plaintiff has built up and established an extensive demand for each and all of the said brands of liquor listed on Exhibit "A", and has developed an extensive and valuable goodwill in and to each of said brands; that said plaintiff has popularized said brands of liquor with the consuming public, and has, since it was licensed to do business in the State of Minnesota, realized a net profit from the business carried on by it in the State of Minnesota of approximately Twelve Hundred Dollars (\$1200.00) per month; that said business has been progressively increasing from month to month.

[fol. 36]

XIV

That the Legislature of the State of Minnesota at its regular session in 1935 enacted Chapter 390 of the Session Laws of 1935 which reads as follows:

"An Act to Regulate the Importation of Intoxicating Liquor Containing More Than 25 Per Cent of Alcohol by Volume

Be it enacted by the Legislature of the State of Minnesota:

Section 1. No licensed manufacturer or wholesaler shall import any brand or brands of intoxicating liquors contain-

ing more than 25 per cent of alcohol by volume ready for sale without further processing unless such brand or brands shall be duly registered in the patent office of the United States."

that said law was duly approved on the 29th day of April, 1935 and is now a part of the statutory law of the State of Minnesota; that after the enactment of said law said David R. Arundel, as liquor Control Commissioner of the State of Minnesota, notified said plaintiff that said law had been enacted and that said plaintiff should cease and desist as a manufacturer and wholesaler from importing any brand or brands of intoxicating liquors containing more than 25% of alcohol by volume ready for sale without further processing unless such brand or brands were duly registered in the patent office of the United States.

XV

That none of said brands listed on Exhibit "A" have ever been registered in the patent office of the United States and that each and all of said brands contain more than 25% of alcohol by volume, and that each and all of said brands so imported by the plaintiff in the State of Minnesota are finished products and no further processing is necessary;

That since the enactment of said law by the Legislature of Minnesota, said plaintiff has been prevented by the Liquor Control Commissioner of the State of Minnesota, from importing any of said brands into the State of Minnesota as a manufacturer and from selling any of said brands in the State of Minnesota as a wholesaler.

[fol. 37] That at the time said law was enacted plaintiff herein had a stock of merchandise consisting of said brands listed on Exhibit "A", attached to plaintiff's bill of complaint, in the State of Minnesota amounting to approximately Twenty Thousand Dollars (\$20,000.00) which stock of merchandise said plaintiff has been permitted to sell and deliver to its customers in the State of Minnesota after the enactment of said law; that said stock of merchandise at the time of the commencement of this action had been exhausted and plaintiff had unfilled orders on hands for brands of liquor listed in Exhibit "A", attached to plaintiff's bill of complaint, amounting to approximately One

Thousand Dollars (\$1,000.00) and said plaintiff was forced to reject orders in the amount of approximately Five Thousand Dollars (\$5,000.00) for brands of liquor listed on said Exhibit "A", for the reason that said plaintiff had been unable to accept said orders and to fill the same for the reasons above stated;

That because of said law and the attempt to enforce the same by the Liquor Control Commissioner said plaintiff has been obliged to lay off his traveling salesmen, desist in advertising said brands of liquor, and in promoting its business in the State of Minnesota and that said conditions above set forth will again result if said law is enforced and sustained.

XVI

That on account of said law and the acts and conduct of said Liquor Control Commissioner thereunder, as hereinbefore alleged, the said plaintiff's business has been practically closed in the State of Minnesota; that the property and business of said plaintiff in the State of Minnesota, including said plaintiff's goodwill and said brands listed on Exhibit "A", is of the worth and value of Thirty Thousand Dollars (\$30,000.00); that unless said plaintiff is permitted to import said brands of liquor in the State of Minnesota and to sell the same at wholesale in the future as it has been privileged and permitted to do in the past, the business of said plaintiff in the brands listed on Exhibit [fol. 38] "A", attached to plaintiff's bill of complaint, will be completely and totally destroyed and said brands for use in the State of Minnesota will be rendered of no value in said State and said plaintiff will be deprived not only of said property and business of the value of Twenty Thousand Dollars (\$20,000.00), but will be deprived of future profits which said plaintiff believes will amount to at least the sum of Ten Thousand Dollars (\$10,000.00) per year for an indefinite period of time;

That in addition to selling at wholesale the brands of liquor listed upon Exhibit "A", which are brands owned by said plaintiff, said plaintiff has imported into the State of Minnesota through the channels of interstate commerce brands of liquor manufactured by other manufacturing concerns which brands were duly registered with the said Liquor Control Commissioner and permits issued for the sale thereof; that said brands of liquor when so imported by

said plaintiff were sold by it as a wholesaler in the State of Minnesota with the approval of the said Liquor Control Commissioner and in conformity with law; that since the enactment of said statute, as hereinbefore alleged, said plaintiff has been deprived of the right and privilege to import said brands and to sell the same as a wholesaler in the State of Minnesota without first registering said brands in the United States patent office as provided in said statute;

That since April 29th, 1935 there have been and are now citizens and residents of the State of Minnesota engaged in the business of importing brands of intoxicating liquors into the State of Minnesota containing more than 25% of alcohol by volume for the purpose of further processing the same in the State of Minnesota which said brands are not now and never have been registered in the patent office of the United States; that said liquor so imported is being processed in Minnesota and sold at wholesale in Minnesota and in other states in interstate commerce without said brands being registered in the patent office of United States; that under said statutory law, hereinbefore set forth, it [fol. 39] is unnecessary for said brands to be registered in the patent office; that there are a large number of manufacturers and wholesalers of intoxicating liquors who, under the provisions of said statute and with the permission of the said Liquor Control Commissioner, are engaged in importing from other states through the channels of interstate commerce into the State of Minnesota intoxicating liquors containing more than 25% of alcohol by volume under trade marks which have been registered in the patent office of the United States; that the liquor manufactured by plaintiff and sold by him under the brands listed on Exhibit "A" are in some cases identical in kind, ingredients and quality with liquors being sold in Minnesota by manufacturers and jobbers in Minnesota under brands registered in the patent office of the United States; that the registration of brands in the patent office of the United States is not in any way dependent upon the kind, ingredients or quality of the liquor to which the brand is affixed;

That at least six (6) months will be required from and after the date hereof to register each of said brands listed on Exhibit "A" in the patent office of the United States; that to register said brands the plaintiff would be required

to lay out and expend approximately the sum of Sixteen Hundred Dollars (\$1600.00); that should oppositions to any of said registrations be filed, a greater period than six (6) months would be required to obtain said registrations and the cost of said registration would be materially and substantially increased over and above said figure of Sixteen Hundred Dollars (\$1600.00); that while the brands of said plaintiff listed on Exhibit "A" have been duly approved by said Liquor Control Commissioner of Minnesota and sold in the State of Minnesota and while said plaintiff has acquired valuable property rights therein, that because of the nature and character of said brands, there is a reasonable probability that some of the same cannot be registered in the patent office of the United States;

[fol. 40] That in addition to shipping its manufactured product into the State of Minnesota, as hereinbefore alleged, said plaintiff has been and now is engaged in shipping said brands of liquor listed on Exhibit "A" in interstate commerce in various states of the United States; that said plaintiff has extensively advertised said brands throughout the United States and spent large sums of money in and about the creation of a demand for said brands of liquor;

That the effect of Chapter 390, as hereinbefore set forth, would substantially and materially effect the cost of transacting plaintiff's business in interstate commerce in other parts of the United States;

That said plaintiff employs in its manufacturing plant in the City of Chicago, Illinois 120 employees who are engaged in and about the manufacture of intoxicating liquors; that more than 200 manufacturers and wholesalers of intoxicating liquors have been duly licensed to sell their various brands in the State of Minnesota, which brands have not been registered in the patent office of the United States; that each of said manufacturers and importers is directly affected by said statutory law.

XVII

That this action is brought by said plaintiff on its own behalf and on behalf of all other manufacturers and wholesalers of intoxicating liquors similarly situated and who are affected by the provisions of said statutory law hereinbefore set forth; that the question of the constitutionality of said statute is one of common and general interest to

many persons constituting a class so numerous as to make it impracticable to bring them all before the court.

XVIII

That said plaintiff has no plain, speedy and adequate remedy at law.

[fol. 41]

XIX

That the jurisdiction of this court depends on the following grounds:.

a. This is a suit of a civil nature in equity arising under the Constitution of the United States to enjoin the enforcement of the Statute hereinbefore set forth of the State of Minnesota on the ground that said statute violates the Federal Constitution and the rights of the plaintiff hereunder, and that the amount in controversy exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

b. This is a suit of a civil nature in equity between citizens of different states therein the amount in controversy exceeds, exclusive of interest or costs, the sum or value of \$3,000.00.

From the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I

That the plaintiff is entitled to the decree of this court adjudging and determining that Chapter 390 of the Session Laws of Minnesota of 1935 is in all things unconstitutional and void.

II

That the plaintiff is entitled to the decree of this Court:

(a) Enjoining and restraining said defendants, and each of them, from making any attempt by legal action, or otherwise, to enforce the provisions of Chapter 390 of the Session Laws of Minnesota of 1935;

(b) Enjoining and restraining said defendants, and each of them, from making any attempt by legal proceedings, or otherwise, to enforce any of the regulations of the Liquor

Control Commissioner of the State of Minnesota issued and promulgated under and pursuant to and for the enforcement of Chapter 390 of the Session Laws of Minnesota of 1935;

[fol. 42] (c) Enjoining and restraining said defendants, and each of them, from interfering with and from forbidding or preventing in any manner the importation by the plaintiff into the State of Minnesota, and the sale thereof after such importation, of any brand or brands of intoxicating liquors containing more than 25% of alcohol by volume which is ready for sale without further processing, on the ground that said brand or brands have not been registered in the Patent Office of the United States.

Dated: November 27th, 1937.

John B. Sanborn, United States Circuit Judge; Gunnar H. Nordbye, United States District Judge; Matthew M. Joyce, United States District Judge.

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DISTRICT

JOSEPH TRINER CORPORATION, a Corporation, Plaintiff,

vs.

WILLIAM MAHONEY, as Liquor Control Commissioner of the State of Minnesota; WILLIAM S. ERVIN, Attorney General of the State of Minnesota; and ELMER BENSON, Governor of the State of Minnesota, Defendants

DECREE—Filed November 27, 1937

This cause came on to be heard before a three Judge Court at this term, and was argued by counsel. Thereupon, upon consideration thereof,

It was Ordered, Adjudged and Decreed as follows:

I

That Chapter 390 of the Session Laws of Minnesota of 1935, and the whole thereof, is in all things unconstitutional and void.

II

It is Further Ordered, Adjudged and Decreed that said defendants, and each of them, are hereby permanently restrained and enjoined from doing the following acts and things:

[fols. 44-48] (a) Making any attempt by legal action, or otherwise, to enforce the provisions of Chapter 390 of the Session Laws of Minnesota of 1935;

(b) From making any attempt by legal proceedings, or otherwise, to enforce any of the regulations of the Liquor Control Commissioner of the State of Minnesota issued and promulgated under and pursuant to and for the enforcement of Chapter 390 of the Session Laws of Minnesota of 1935;

(c) From interfering with and from forbidding or preventing in any manner the importation by the plaintiff into the State of Minnesota, and the sale thereof after such importation, of any brand or brands of intoxicating liquors containing more than 25% of alcohol by volume which is ready for sale without further processing, on the ground that said brand or brands have not been registered in the patent office of the United States.

Dated: November 27th, 1937.

John B. Sanborn, United States Circuit Judge; Gunnar H. Nordbye, United States District Judge; Matthew M. Joyce, United States District Judge.

[File endorsement omitted.]

[fols. 49-61] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed December 24, 1937

Counsel having stipulated to waive the bond for costs in the above entitled case, the foregoing petition is hereby granted and the appeal of the defendants and each of them is hereby allowed.

Dated December 24, 1937.

Matthew M. Joyce, Judge of the United States District Court.

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF EVIDENCE ON APPEAL—Filed January 28, 1938

This cause came on for hearing before the three-judge court organized under the provisions of Section 380 of the United States Code Annotated, the Honorable John B. Sanborn, Judge of the United States Circuit Court of Appeals, Eighth Circuit, and the Honorable Gunnar H. Nordbye and Mathew M. Joyce, Judges of the United States District Court for the District Court of Minnesota, Fourth Division, Judges of said Court, on the 9th day of April, 1937, upon the Bill of Complaint of the plaintiff praying for a permanent injunction in said cause. The cause was submitted, by the stipulation of the parties, through their respective counsel and the consent of the Court, upon written stipulation of facts and upon written briefs. This stipulation of facts filed with the Clerk is by reference made a part of this statement of evidence.

It was stipulated that the issues for the determination of this Court are of law and not of fact, the said defendants [fol. 63] conceding that the allegations of plaintiff's Bill of Complaint having to do with or referring to the jurisdiction of this Court with respect to the fact that the plaintiff is a corporation duly organized under the laws of the State of Illinois and was, at the time of the hearing of said cause, doing business in the State of Minnesota as a wholesaler of intoxicating liquors and was duly licensed to so do, and that plaintiff had registered and filed with the Liquor Control Commissioner of the State of Minnesota the various brands of intoxicating liquors imported by it into the State of Minnesota, together with a chemical analysis of each brand, and that under the provisions of Chapter 390, Minnesota Laws of 1935, the plaintiff would be required to register said brand names in the Patent Office of the United States before it could import said brands of intoxicating liquor into the State of Minnesota without further processing, and that many of said brand names could not be registered in the Patent Office of the United States, and that plaintiff's business will suffer at least \$10,000.00 each year if said law is enforced, and that defendants have threatened to, and

unless they are enjoined from so doing, will enforce all of the provisions of Chapter 390, Minnesota Laws of 1935, against this plaintiff and others similarly situated, are true.

William S. Ervin, Attorney General; Roy C. Frank, Assistant Attorney General; Solicitors for Defendants, 102 State Capitol, St. Paul, Minnesota.

[File endorsement omitted.]

[fols. 64-70] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING STATEMENT OF EVIDENCE—Filed January 28, 1938

The above entitled matter came on for hearing on January 28, 1938, on the application of William S. Ervin, Attorney General, and Roy C. Frank, Assistant Attorney General, Solicitors for the Defendants, for the approval and allowance of the Statement of Evidence on Appeal, lodged in the office of the Clerk of this Court on the 18th day of January, 1938. The Court finding the said Statement of Evidence to be true, complete and properly prepared,

It Is Hereby Ordered, that the said Statement of Evidence on Appeal is allowed, settled and approved, and filed as the Statement of Evidence to be included in the record on appeal in the above entitled cause, as provided by Equity Rule 75 (b).

Dated this 28th day of January, 1938.

John B. Sanborn, Judge of Circuit Court of Appeals,
Eighth Circuit.

[File endorsement omitted.]

[fol. 71] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1937

No. 761

JOSEPH TRINER CORPORATION, a Corporation, Plaintiff,

vs.

WILLIAM MAHONEY, as Liquor Control Commissioner of the
State of Minnesota; William S. Ervin, Attorney General
of the State of Minnesota; and Elmer Benson, Governor
of the State of Minnesota, Defendants

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION
OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Febru-
ary 10, 1938

Come now the appellants in the above entitled cause and
in support of their appeal hereby file their definite statement
of the points on which they intend to rely in said appeal,
and hereby state such points to be as follows:

That the District Court of the United States, for the
District of Minnesota, Fourth Division, and the special
three-judge court organized and sitting therein, erred:

I

In determining as a conclusion of law that the plaintiff
was entitled to the decree of the court adjudging and deter-
mining that Chapter 390 of the Session Laws of Minnesota
of 1935 is in all things unconstitutional and void.

II

In determining as a conclusion of law that the plaintiff
was entitled to the decree of the Court.

(a) Enjoining and restraining the defendants, and each
of them, from making any attempt by legal action, or other-
wise, to enforce the provisions of Chapter 390 of the Session
[fol. 72] Laws of Minnesota of 1935;

(b) Enjoining and restraining said defendants, and each
of them, from making any attempt by legal proceedings, or
otherwise, to enforce any of the regulations of the Liquor
Control Commissioner of the State of Minnesota issued and
promulgated under and pursuant to and for the enforcement

of Chapter 390 of the Session Laws of Minnesota of 1935;

(c) Enjoining and restraining said defendants, and each of them, from interfering with and from forbidding or preventing in any manner the importation by the plaintiff into the State of Minnesota, and the sale thereof after such importation, of any brand or brands of intoxicating liquors containing more than 25 per cent of alcohol by volume which is ready for sale without further processing, on the ground that said brand or brands have not been registered in the Patent Office of the United States.

III

In rendering and entering its final decree

(a) Adjudging and determining that Chapter 390 of the Session Laws of Minnesota of 1935, to be, in all things, unconstitutional and void;

(b) Enjoining and restraining the defendants, and each of them, from making any attempt by legal action, or otherwise, to enforce the provisions of Chapter 390 of the Session Laws of Minnesota of 1935;

(c) Enjoining and restraining said defendants, and each of them, from making any attempt by legal proceedings, or otherwise, to enforce any of the regulations of the Liquor Control Commissioner of the State of Minnesota issued and promulgated under and pursuant to and for the enforcement of Chapter 390 of the Session Laws of Minnesota of 1935;

[fol. 73] (d) Enjoining and restraining said defendants, and each of them, from interfering with and from forbidding or preventing in any manner the importation by the plaintiff into the State of Minnesota, and the sale thereof after such importation, of any brand or brands of intoxicating liquors containing more than 25 per cent of alcohol by volume which is ready for sale without further processing, on the ground that said brand or brands have not been registered in the Patent Office of the United States.

IV

In its failure to hold that Chapter 390 of the Laws of Minnesota of 1935 was constitutional.

V

In its failure to dismiss the plaintiff's bill of complaint.

And appellants further state that only the following parts of the record, as filed in this court, need be printed by the clerk for the hearing of the cause:

1. Bill of Complaint.
2. Answer.
3. Order allowing substitution of defendants.
4. Opinion.
5. Findings of fact and conclusion of law.
6. Final decree.
7. Order allowing appeal.
8. Statement of evidence and order allowing the same.
9. Statement of points to be relied upon and designation as to printing record.

William S. Ervin, Attorney General; Roy C. Frank, Assistant Attorney General, 102 State Capitol Building, St. Paul, Minnesota, Solicitors for Defendants.

[fol. 74] Service of the foregoing Statement of points to be Relied Upon and Designation of the Parts of the Record to be Printed is hereby acknowledged this 9th day of February, 1938.

Bradford, Cummins and Cummins, Solicitors for Appellees.

[fol. 75] [Endorsed:] In Supreme Court of the United States, No. 761, October Term, 1937. Joseph Triner Corporation, a Corporation, Plaintiff, vs. William Mahoney, as Liquor Control Commissioner of the State of Minnesota, William S. Ervin, Attorney General of the State of Minnesota; and Elmer Benson, Governor of the State of Minnesota, Defendants. Statement. William S. Ervin, Attorney General; Roy C. Frank, Assistant Attorney General, 102 State Capitol Building, St. Paul, Minnesota, Solicitors for Defendants.

[fol. 76] [File endorsement omitted.]

Endorsed: File No. 42,242. Minnesota, D. C. U. S. Term No. 761. William Mahoney, as Liquor Control Commissioner of the State of Minnesota, et al., Appellants, vs. Joseph Triner Corporation. Filed February 7, 1938. Term No. 761, O. T. 1937.